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ENTRY INTO FORCE AND PROVISIONAL APPLICATION OF THE 1988 UNITED NATIONS CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

Report of the Secretary-General

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CONCLUSIONS AND RECOMMENDATIONS

1. The adoption of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (E/CONF.82/15 and Corr.2) in 1988 is one of the major achievements of the international community in recent years; it marks a significant breakthrough in the concerted efforts of Member States to stem the insidious advance of the drug menace. The Secretary-General has repeatedly stressed that the Convention constituted a very important and timely instrument for increasing international co-operation in the suppression of illicit drug trafficking, aimed particularly at hitting the drug traffickers where it hurts them most, in their pockets, liberty of movement and organization. He did so most recently in September 1989 in his report on the international campaign against traffic in drugs (A/44/572, para. 32), submitted to the forty-fourth session of the General Assembly, underlining that it was essential that it should enter into force as a matter of urgency, especially in view of the rapidly deteriorating situation everywhere. He accordingly addressed an urgent appeal to States that have not already done so to sign and ratify the Convention at the earliest possible date and to implement immediately as many of its provisions as possible.

2. In the mean time, the international campaign against drugs has taken on even more dramatic characteristics and urgency. It was a dominant theme of the forty-fourth session of the General Assembly, which will hold a special session at the highest political level at United Nations Headquarters from 20 to 23 February 1990 to assess the current situation and determine what urgent steps must now be taken in order to make an effective impact upon it. The Convention is one of the most important instruments in the arsenal of weapons at the disposal of the international community. The Secretary-General accordingly wishes to reiterate his earlier appeal that urgent measures be taken by all concerned in order to bring it fully into force. Given the important role assigned to the Commission on Narcotic Drugs in General Assembly resolution 44/410 in contributing substantive ideas to the special session of the General Assembly, he further wishes to express the hope that significant progress can be achieved as a result of the eleventh special session of the Commission and reported to the General Assembly at its special session.

3. In addressing this issue, the Commission will also wish to consider the measures States might take to enact legislation needed to implement the Convention or to harmonize their national legislation with its provisions. It may also wish to instruct the Division of Narcotic Drugs as to how it may most effectively assist States, which so request, in undertaking such measures and strengthen the efforts already undertaken by the Division in this regard.

4. The need for additional resources to enable the Division of Narcotic Drugs and the secretariat of the International Narcotics Control Board to carry out the additional responsibilities devolving upon them by the Convention is critical in this regard. While it has been possible to include some increases in the regular budget for the biennium 1990-1991 recently approved by the General Assembly and some Member States have provided welcome extrabudgetary support, there remains a gap of more than $US 3 million that must be provided from sources other than the regular budget if these two regular budget drug control units are to play their role properly in the crucial next two years. The Commission will therefore wish to review ways of filling this gap and may wish to urge some Member States in a position to do so to consider providing extrabudgetary resources for this purpose.

I. BACKGROUND

5. The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and the Final Act of the United Nations Conference for the Adoption of a Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (E/CONF.82/14) were adopted by consensus by 106 States at a plenipotentiary conference held at Vienna from 25 November to 20 December 1988. As of 20 December 1989, the Convention had been signed by 89 States and one regional economic integration organization (see annex I), in accordance with article 26 of the Convention, and had been ratified by four States: Bahamas, China, Nigeria and Senegal. Article 29 of the Convention stipulates that 20 instruments of ratification are required for its entry into force. Article 21 authorizes the Commission to consider all matters pertaining to the aims of the Convention, including a review of its operation.

II. ENTRY INTO FORCE AND PROVISIONAL APPLICATION OF THE UNITED NATIONS CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

6. In paragraph 3 of its resolution 43/120 of 8 December 1988 and paragraph 7 of resolution 44/140 of 15 December 1989, the General Assembly requested the Commission on Narcotic Drugs, as the principal United Nations policy-making body on drug control, to identify suitable measures to be taken prior to the entry into force of the Convention.

7. With a view to achieving the ratification and implementation of the Convention at the earliest possible date, the Conference adopted resolution 2, entitled "Provisional application of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances" (E/CONF.82/14, annex). On the recommendation of the Commission on Narcotic Drugs at its thirty-third session,* the Economic and Social Council adopted resolution 1989/13 of 22 May 1989, which incorporated paragraphs 1 and 2 of resolution 2 adopted by the Conference. In addition, States were urged to take the requisite legal and administrative measures and to devote the necessary resources to ensure effective implementation.

8. The Council, stressing the urgency for States to use all legal measures available to them in the effort to curb drug trafficking, including those defined in the Convention, adopted resolution 1989/19 on 22 May 1989, in which it further reiterated the provisions of paragraphs 1 and 2 of resolution 2 of the Conference.

9. In its resolution 44/140, the General Assembly urged States to establish the necessary legislative and administrative measures so that their internal juridical regulations may be compatible with the spirit and scope of the Convention. It also invited States, to the extent that they are able to do so, to apply provisionally the measures set forth in the Convention, pending its entry into force.

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*See draft resolution I in Official Records of the Economic and Social Council, 1989, Supplement No. 5 (E/1989/23), chap. I, sect. A.

10. Pursuant to Economic and Social Council resolution 1989/13, paragraph 6, the Secretary-General has modified part A of the annual reports questionnaire on the implementation of international drug control treaties so that the Commission may review the steps taken by States to ratify, accept, approve or formally confirm the Convention. As of 1 December 1989, 40 replies* had been communicated to the Division of Narcotic Drugs on steps taken in that direction. These are summarized in annex II.

11. In paragraph 9 of its resolution 1989/13, the Council invited the Secretary-General to identify the financial, technical and human resources required by the Division of Narcotic Drugs and the secretariat of the International Narcotics Control Board "to carry out their additional responsibilities in relation to the Convention and, within existing resources, to make every effort to assign the necessary resources to the drug control units for the biennium 1990-1991". This has been done; it is estimated that the additional cost would amount to $US 3.8 million for the biennium 1990-1991. Due to budgetary constraints, it was only possible to include approximately $US 494,000 for the secretariat of the International Narcotics Control Board and $US 229,000 for the Division of Narcotic Drugs in the programme budget for the period 1990-1991. Extrabudgetary resources are therefore urgently required to cover the deficiency.

12. In paragraph 7 of its resolution 1989/13, the Council requested the Secretary-General "to provide assistance to States, at their request, to enable them to establish the legislative and administrative measures necessary for the application of the Convention". This request was reiterated in paragraph 9 of General Assembly resolution 44/140. Accordingly, the Secretary-General has provided such assistance to States that so requested. This is an ongoing activity, as most, if not all, States wishing to become parties to the Convention may have to adjust some of their laws to comply with its provisions. The Division of Narcotic Drugs, on behalf of the Secretary-General, has identified modalities for assisting States in becoming parties to the Convention and provisionally in applying its provisions prior to its entry into force. It has also included in its programme of work for the biennium 1990-1991 the provision of legal and technical assistance to States for the ratification of the Convention. This includes, in particular, assistance in drafting or amending national legislation to comply with the provisions of the Convention.

13. The Council, in its resolution 1988/9, recommended that the Secretary-General convene a second interregional meeting of heads of national drug law enforcement agencies with a view to promoting co-operation in the implementation of the Convention. Accordingly, the Second Interregional Meeting of Heads of National Drug Law Enforcement Agencies (Interregional HONLEA) was held at Vienna from 11 to 15 September 1989. Following its discussion of the modalities for promoting the provisional application of the Convention,

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*Algeria, Argentina, Austria, Bahamas, Belgium, Bolivia, Colombia, Costa Rica, Côte d'Ivoire, Cuba, Cyprus, Czechoslovakia, Egypt, Fiji, Finland, German Democratic Republic, Hong Kong, Indonesia, Iraq, Madagascar, Mauritius, Netherlands, Netherlands Antilles, Panama, Poland, Romania, Saudi Arabia, South Africa, Spain, Sri Lanka, Sweden, Thailand, Trinidad and Tobago, Tunisia, United Arab Emirates, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Yugoslavia and Zambia.

particularly those measures that required close co-operation between drug law enforcement agencies at the regional and international levels, the Second Interregional HONLEA adopted by consensus resolution II,entitled "Early ratification of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances". It also adopted 13 recommendations, contained in resolution III, for transmission, by the Secretary-General, to the Commission, the Council and the General Assembly for their urgent consideration (E/CN.7/1990/2, chap. I). Recommendations 1-7 are concerned with measures that States are invited to adopt for the provisional application of the Convention and its prompt implementation.

14. At its twenty-fifth session, held at Ankara from 2 to 6 October 1989, the Sub-Commission on Illicit Traffic in the Near and Middle East adopted draft resolution III, entitled "Provisional application of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances", to be recommended by the Commission for adoption by the Economic and Social Council. This is contained in the Sub-Commission's report (E/CN.7/1990/3, chap. I, sect. B), which is before the Commission under item 7 of the provisional agenda.

15. The Division organized an expert group meeting on the detection of illicit cultivation of narcotic plants by remote sensing, which was held at Vienna from 23 to 27 October 1989 (E/CN.7/1990/CRP.15), a meeting of the Expert Group on Pre-trial Destruction of Seized Narcotic Drugs, Psychotropic Substances, Precursors and Essential Chemicals, which was held at Vienna from 13 to 17 November 1989 (E/CN.7/1990/7/Add.1), and a meeting of the Expert Group on Environmentally Safe Methods for the Eradication of Illicit Narcotic Plants, which was also held at Vienna from 4 to 8 December 1989 (E/CN.7/1990/CRP.7). The reports of these meetings are before the Commission under item 5 of the provisional agenda. Their recommendations, proposed for the consideration of the Commission, are aimed at assisting States in implementing specific provisions of the Convention.

Annex I

STATUS OF ADHERENCE TO THE UNITED NATIONS CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES*

The following 89 States are signatories to the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, in accordance with article 26 of the Convention (E/CONF.82/14 and Corr.2): Afghanistan, Algeria, Argentina, Australia, Austria, Bahamas, Bahrain, Bangladesh, Belgium, Bolivia, Brazil, Brunei Darussalam, Bulgaria, Byelorussian Soviet Socialist Republic, Cameroon, Canada, Chile, China, Colombia, Costa Rica, Côte d'Ivoire, Cuba, Cyprus, Czechoslovakia, Denmark, Ecuador, Egypt, Finland, France, Gabon, German Democratic Republic, Germany, Federal Republic of, Ghana, Greece, Guatemala, Holy See, Honduras, Hungary, Indonesia, Iran (Islamic Republic of), Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kuwait, Luxembourg, Malaysia, Maldives, Mauritania, Mauritius, Mexico, Monaco, Morocco, Netherlands, New Zealand, Nicaragua, Nigeria, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Senegal, Sierra Leone, Spain, Sudan, Suriname, Sweden, Switzerland, Togo, Trinidad and Tobago, Tunisia, Turkey, Ukrainian Soviet Socialist Republic, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Uruguay, Venezuela, Yemen, Yugoslavia, Zaire and Zambia.

On 8 June 1989, the European Economic Community also became a signatory.

The following four States have ratified the Convention: Bahamas, China, Nigeria and Senegal.

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*As of 20 December 1989.

Annex II

STEPS TAKEN WITH A VIEW TO BECOMING A PARTY TO, OR IN PREPARATION FOR THE ENTRY INTO FORCE OF, THE UNITED NATIONS CONVENTION AGAINST ILLICIT TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES

1. Several Governments indicated in their replies to the annual reports questionnaire that the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (E/CONF.82/15 and Corr.2) was being considered for signature* or ratification.** The Government of Panama reported that the ratification process would be undertaken at the next legislative session. In Spain, the consent of the Council of Ministers has been requested for ratification.

2. Several Governments*** reported that a comprehensive review of national legislation was under way in order to incorporate the new provisions with a view to ratifying the Convention and implementing its provisions. Legislation was being drafted in the Bahamas to give effect to the Convention; constitutional steps to ratify the Convention were being undertaken in Cuba. The Governments of Bolivia and the United States of America reported the adoption of comprehensive legislation covering the provisions of the Convention. The Government of the Union of Soviet Socialist Republics pointed out that a number of the provisions, such as those contained in article 11 on controlled delivery, were already being implemented in practical operations.

3. Several Governments have established special working groups (Colombia and Finland), inter-agency committees (Iraq and Thailand) or a national bureau (Fiji) to undertake steps to ratify the Convention. In this connection, the Government of Colombia reported the establishment of an expert group on administrative, constitutional and penal law that would be presenting new draft legislation for the consideration of Congress at its next session. Finland has established, in the broader context of a general reform of its penal code, a special working group on drug-related offences that will prepare amendments to existing laws so that they will conform to the provisions of the Convention.

4. Steps taken to implement article 5 on confiscation were mentioned in several replies.**** The Government of Belgium reported on the preparation of legislation on the confiscation of illicit assets and the establishment of money laundering as a criminal offence. Côte d'Ivoire has adopted legislation for the confiscation of assets and property, as well as legislation increasing the severity of the offences (5-20 years of imprisonment), with no mitigating circumstances provided for offences involving drug trafficking. In Hong Kong,

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*Madagascar and United Arab Emirates.

**Algeria, Argentina, Austria, Costa Rica, Czechoslovakia, German Democratic Republic, Mauritius, South Africa, Tunisia, Union of Soviet Socialist Republics, Yugoslavia and Zambia.

***Cyprus, Egypt, Romania, Saudi Arabia, Sweden, Trinidad and Tobago and Tunisia.

****Belgium, Côte d'Ivoire, Hong Kong, Netherlands and Netherlands Antilles.

legislation on drug trafficking has been drafted to cover the provisions of the Convention and facilitate its application. The criminal code and code of criminal procedures of the Netherlands have been amended to take into account the provisions of the Convention and to enable the tracing, freezing and confiscation of proceeds of drug trafficking. The Netherlands has also concluded treaties with Australia, Canada and the United Kingdom of Great Britain and Northern Ireland on mutual assistance in criminal matters that include specific provisions on co-operation with regard to confiscation.

5. The Governments of Indonesia and Poland have had the Convention translated into their national languages and distributed to their judiciaries, law enforcement agencies and legislative bodies as preliminary steps in the ratification process.

6. The Governments of the Union of Soviet Socialist Republics and the United Kingdom reported on measures taken to implement article 12. In the Soviet Union, ephedrine and other substances have been put under special control; in the United Kingdom, a data base to facilitate the monitoring of the international movement of substances used in the illicit manufacture of narcotic drugs and psychotropic substances has been established.